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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 146

ORTON T. CAMPBELL,

Petitioner,

vs.

JOHN J. DEVINY, ET AL.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

ORTON T. CAMPBELL,
1st. Lt. AO-696837,
580th Reproduction Squadron,
Gowen Field,
Boise, Idaho,
pro se.

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Exhibit 2. Brief of Appellee-Petitioner, as filed in the lower court. Under Separate Cover

SUPREME COURT OF THE UNITED STATES

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Orton T. Campbell, most respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above entitled cause on January 24, 1952.

Opinions Below

The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 243) is reported at 194 F. 2(d) 876. The opinion of the District Court is unreported, but the Findings of Fact, Conclusions of Law, and

Final Judgment are set forth in their entirety at J. App. 232-236.

The sole questions presented to both lower courts were whether the alleged reasons assigned for Petitioner's dismissal from his Civil Service position were in accordance with Section 14 of the Veterans' Preference Act, *infra;* whether the applicable administrative regulations were followed; whether those regulations were reasonably adequate; and whether it was prejudicial error for a Judge of the District Court, other than the Trial Judge, to refer this case prior to trial to the Court Commissioner of Veterans' Cases for report pursuant to Local Civil Rule 29, *infra. The truth or falsity of the alleged reasons assigned for Petitioner's dismissal was not at issue at any time.*

After lengthy hearings and presentation of evidence, the District Court Commissioner of Veterans' Cases submitted a detailed report (J. App. 71-127) to the District Court which stated (J. App.) at page 100:

> "• • • I cannot see how any fair-minded executive could arrive at any other conclusion from the related facts herein than that the then Public Printer or his successor was attempting to remove from the classified service an employee in contravention to the provisions of the Veterans' Preference Act.
>
> "Here is the Chief Executive of an important executive agency blatantly attempting to rid himself of a preference employee."

and (J. App.) at page 102:

> "• • • The Commission, as a friend of the veteran, just simply let him down in this case as part and parcel of the attempt to avoid the mandate of the Section 14 and the regulations thereunder."

and further at page 112 (J. App.):

> "Plaintiff (Petitioner) has demanded and been refused the particulars in detail lacking in several of the preferred charges."

The District Court, after additional lengthy argument and presentation of evidence, set aside Petitioner's dismissal and directed his reinstatement by (J. App. 232-236):

> "*Findings of Fact* • • • At no time was Plaintiff (Petitioner) advised in writing of all reasons specifically and in detail of the charges preferred against him sufficient to inform him with reasonable certainty and precision of the cause for his removal."
>
> "*Conclusions of Law* • • • That the charges filed against Plaintiff (Petitioner) by the Public Printer on April 29, 1949, upon which his wrongful discharge was based, do not state 'all reasons specifically and in detail for any such proposed action' as required by Section 14 of the Veterans' Preference Act of June 27, 1944 (Title 5 U. S. C. Para. 861), and therefore, the findings of the Defendants (Respondents) sustaining such charges are null and void and of no legal effect and should be set aside by order of this Court."

The Court of Appeals reversed the lower court in a majority opinion stating at (R. 245) 94 F. 2(d) 877:

> "• • • His (Petitioner's) argument is, in effect, that, since all reasons for which he was discharged had to be stated in detail, failure of one asserted reason to meet that test invalidated the whole result. It seems to us that *the statute would be absurd if it had such a meaning.*" (Emphasis supplied.)

in obvious contravention to the applicable Federal statute requiring *advance written notice*, stating "*any* and *all* reasons, *specifically and in detail*, for any such *proposed* action."

Furthermore, the Court of Appeals failed to rule on a bitterly contested question of law, that of reference of the case prior to trial to the Court Commissioner of Veterans' Cases for report pursuant to Local Civil Rule 29, *infra*.

Jurisdiction

On April 22, 1952 the time for filing Petition for Writ of Certiorari was extended to and including June 21, 1952 (R. 252). The Jurisdiction of the United States Supreme Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 936 and under 28 U. S. C. Section 1254 (1).

Questions Presented

1. When Petitioner, as a Federal employee entitled to the provisions of Section 14 of the Veterans' Preference Act requiring advance written notice "stating *any* and *all* reasons, *specifically* and *in detail*" for the proposed discharge, was dismissed for the *cumulative* effect of ten charges of alleged misconduct, was not such dismissal invalidated when six of the charges were so vague and gossamer in nature in the original notice as to make it impossible for Petitioner to defend himself other than by a general denial?

2. In a case tried without a jury, where the trial court after examining the Court Commissioner's detailed report, the documentary evidence and the admissions of the Defendants-Respondents, found as a fact that "at no time was Plaintiff-Petitioner advised in writing of all reasons specifically and in detail of the charges preferred against him sufficient to inform him with reasonable certainty and precision of the cause for his removal", and within the meaning of Rule 52 (a), Federal Rules of Civil Procedure, providing that such findings of fact shall not be set aside unless clearly erroneous, did not the Court of Appeals re-

verse the District Court in contravention to Section 14 of the Veterans' Preference Act by stating "the statute would be absurd if it had such a meaning?

3. In such a manifest departure from the accepted and usual course of judicial procedure, was the Court of Appeals justified in rendering an opinion on the merits of the charges as stated solely by Appellants-Respondents when Appellee-Petitioner had raised only a question of law in all proceedings?

4. The Court of Appeals having failed to rule on an important question of law bitterly contested by all parties, was it or was it not prejudicial error for one of the judges of the District Court other than the Trial Judge to refer this case prior to trial to the Court Commissioner of Veterans' Cases for a report pursuant to Local Civil Rule 29, *infra*?

5. Whether Respondent's ten alleged reasons for dismissing Petitioner can be accepted by the Court as bona fide and presented in good faith, when, in fact, documentary evidence[1] in the court record below clearly shows by

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[1] Excerpts, Official Transcript of meeting held Nov. 4, 1947 in the office of the Public Printer, *19 months before* Petitioner's dismissal on June 3, 1949.

Executive Officer Herrell: • • • what are the specific grounds on which we can fire him? • • •

Director of Personnel Hipsley: You have every right to direct him to be examined by a psychiatrist • • • then if he is determined to be abnormal our problem is solved • • •

Planning Manager Cole: An examination will convince the psychiatrist that he has an I.Q. of a college professor and the mental ability to handle the Washington Loan and Trust.

Herrell: • • • There is a question in my mind as to whether we could demand, as a matter of right, that he be examined • • •

Comptroller Cristofane: • • • I believe we would be in a better position if we abandoned the idea. • • •

Deputy Public Printer Deviny: When he is interviewed by the Public Printer the Public Printer could demand his resignation. • • • Frequently that works very successfully.

Herrell: But he would take the case to his attorney.

Respondent's own admissions that they were at a loss for legitimate grounds for Petitioner's dismissal and were forced to find same at any cost in order that Petitioner's appeal for his statutory reemployment rights in Case No. 10147 before the Court of Appeals be dismissed for mootness, and did they not thereby place themselves in contempt of court? (Petitioner presently has two petitions for writ of certiorari before the Supreme Court.)

Christofane: • • • The insubordination charge, of course, is pretty far back.

Herrell: You could get that in the morning. You go in there and tell him to do something and you'll get it right now. • • • If as John (Deviny) says, we think we can support the charge of insubordination, all right; • • •

Hipsley: I wouldn't be disturbed whether the board establishes the facts *before or after,* but I do think in this case we have 9 changes out of 10 of losing, on the basis of the facts as I see them. • • • If the man didn't get the papers in an unauthorized way and we could determine it *before we jumped off the board, we would certainly be in a far better position than making the charges and finding out about them afterwards.*" (Emphasis supplied.)

The Late Hon. T. Alan Goldsborough, Trial Judge in the District Court session on May 18, 1951, commented on Respondent's bad faith as follows:

"But what did you do when he had an appeal in the Court of Appeals to have him put back in office? You discharged him just a few days before his appeal could be heard, so as to stop the appeal. That is bad stuff, you know."

The Report of the Commissioner of Veterans' Cases for the District Court filed November 24, 1950 stated:

"The events preceding plaintiff's (Petitioner's) discharge lead me to the conclusion that *he was discharged because the Public Printer would not stand for any employee claim,* even statutory, no matter how just or inconsequential. When the plaintiff (Petitioner) pursued his remedy for relief into the Federal Court, the rage of the Public Printer apparently started a course of action that included his placing plaintiff (Petitioner) at a desk with no duties for ten months at the expense of the taxpayers. Then when charges were preferred against the plaintiff (Petitioner), there was revealed a 'tempest in a teapot', based on charges, many over two years old, and the rest about one year old each. I cannot see how any fair-minded executive could arrive at any other conclusion from the related facts herein than that the then Public Printer or his successor, was attempting to remove from the classified service an employee in contravention to the provisions of the Veterans' Preference Act." (Emphasis supplied.)

Statutes and Regulations Involved

Section 14 of the Veterans' Preference Act of 1944, as amended, 65 Stat. 39, 61 Stat. 723, 5 U. S. C. A. 863, provides the mandatory and limiting procedural pattern by which a veteran Federal employee may be discharged, pertinent part as follows:

> "No permanent or indefinite preference eligible, * * * shall be discharged * * * and for reasons given in writing, and * * * shall have at least thirty days' *advance written notice* (except where there is reasonable cause to believe the employee to be guilty of a crime from which a sentence of imprisonment can be imposed), stating *any* and *all* reasons, *specifically* and *in detail,* for any such *proposed* action; * * * Provided, that such preference eligible shall have the right to make a personal appearance, * * * in accordance with such reasonable rules as may be issued by the Civil Service Commission; * * *" (Emphasis supplied.)

Rule 52 (a), Federal Rules of Civil Procedure, provides in pertinent part:

> "* * * Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. * * *"

Rule 29, Local Civil Rules of the District Court for the District of Columbia, provides in pertinent part:

> "(a) *Reference to Commissioner.* The following cases when filed shall stand referred to the Commissioner of Veterans' Cases:
>
> "2. Action against an officer of the United States for mandatory or injunctive relief concerning insurance, compensation, retired emergency officers pay, or other benefits due veterans or their dependents."

Summary of Case (3 Years)

Inasmuch as the Respondents have throughout the record clouded and distorted the simple issue of violation of statute by attempting to argue the merits of the charges, and as Petitioner presently has two petitions for certiorari before this Court, a small amount of background must be related in order to give proper perspective to the instant case.

The report of the District Court Commissioner (J. App. 80-81) shows that Petitioner was employed continuously in the Government Printing Office from October 16, 1935 until January 15, 1943 when he was placed on military furlough until his return to civilian duty on April 15, 1946 following his honorable discharge. During his employment, Petitioner was appointed to many official positions of honor and trust, viz., Editor-in-Chief of the AGPO; Editor-in-Chief of the Recreation News; Editor-in-Chief of official Five-Year Commemoration Annual; placed second in a National contest for printing designs; designed and produced the official diploma; designed and produced the portfolio; designed and produced the bronze plaque "This is a Printing Office" now mounted in the lobby of Building No. 3; was appointed to Planning Division and was responsible for War Bond promotion work; received a citation from Henry Morgenthau, Jr., Secretary of the Treasury of the United States, "For Distinguished Services" in behalf of the National War Savings Program; received a letter of commendation for production work from Director of Radio and Press of War Savings Staff, et cetera.

When Petitioner volunteered for military service in 1942, the Superintendent of Planning of the Government Printing Office wrote a letter of commendation (J. App. 157) as follows:

> "• • • His duties on this work required a clear, quick-acting mind, above average intelligence, and a

pleasing and cooperative personality. He has also been required, due to unexpected demands, to work exceptionally long hours. In all of these duties, I have found Mr. Campbell thoroughly capable.

"• • • His performance has been outstanding in this Division, • • •"

Respondent's predecessor Public Printer wrote in 1942 (J. App. 158) pursuant to Petitioner's entering military service:

"• • • he was promoted to the Planning Division where he is now carried as an estimator. This position requires a high degree of skill, industry and loyalty to the Office.

"We have found Mr. Campbell to be an intelligent, industrious, interested employee. • • •"

After Petitioner's return from overseas duty, Morris H. Reeves, Superintendent of Composition of the Government Printing Office, wrote on December 12, 1945 (J. App. 159):

"• • • Mr. Campbell was assigned to the Planning Division at the outbreak of the War. He worked there until he was called into military service, demonstrating a high degree of adaptability to new phases of the work, so much so that he was selected to be one of the few who represented the Office in the field in connection with the purchase of printing from private firms.

"He is earnest, conscientious, and gets along well with his supervisors and co-workers. I have found him ready at all times to serve beyond his regular tour of duty. • • •"

Emmit I. Hill, Director of Commercial Planning of the Government Printing Office, wrote on July 12, 1946:

"• • • Mr. Campbell was one of the first employees of the Office engaged in the commercial procurement of printing. It is believed that had his office experience not been interrupted by military service,

he would have been used in a grade of work even higher than CAF-9 which is now being asked for him. In industry and initiative he is not surpassed by any employee or official of this Division.

"• • • with slightly more experience will be qualified to fill the vacancy left by Mr. Panneton's promotion to Assistant Director of this Division. It may be noted here that when Mr. Campbell went into the Army Air Forces he and Mr. Panneton were working side by side on an identical class of work."

Upon Petitioner's return to the Government Printing Office on April 15, 1946 he learned that his former position had been reallocated, that he had been omitted from any consideration during his military service, and was being reemployed at the beginning and lowest position established, without regard to his reemployment rights. After exhausting all administrative recourse to no avail, Petitioner brought suit in the District Court for the District of Columbia for his proper mandatory reemployment. The suit was dismissed for lack of jurisdiction, and the decision, being affirmed by the Court of Appeals, is presently before this Court on another petition for certiorari, No. 10147.

Immediately after Petitioner filed suit for proper reemployment, Respondent Public Printer had all of Petitioner's duties and responsibilities taken away, leaving him idle for a period of ten months (J. App. 80, Report of Court Commissioner.). Herbert J. Jacobi, member of the District of Columbia Bar and past National Vice-Commander of the American Legion, testified under oath (J. App. 83-84) that Respondent Public Printer stated, "*He* (Public Printer) *would fire Mr. Campbell* and see that he would never get another job with any reputable or union printer", and that, "He (Public Printer) *had had the telephone tapped* and was listening in on conversation between Mr. Campbell and another employee of the Government Printing Office", and that the Public Printer "*raved,*

pounded his fist on the desk and cursed heavily". (Emphasis supplied.)

Many meetings were held by Respondent Public Printer during the period from April 15, 1946 until April 29, 1949 on the subject of *how to dismiss Petitioner,* see Footnote 1, an obvious retaliation to his filing suit for his reemployment rights in Case No. 10147.

Accordingly, when Respondent Public Printer learned that the date of oral argument in case No. 10147 was to be advanced on the Court calendar, he had his agent hand Petitioner a written notice dated April 29, 1949 proposing his dismissal (J. App. 7-9) on ten charges of alleged misconduct, six of which were manifestly enigmatic and vague.[2]

By registered letter dated May 12, 1949 (J. App. 11-13), Petitioner requested the specificity lacking in the charges, such as the naming of the mysteriously termed "official papers" allegedly removed or caused to be removed, the naming of his alleged accomplice(s), the nature of the "false and unfounded" statements allegedly made, that he be given or at least shown a copy of the American Legion letter referred to, and details concerning many other general innuendoes contained in Charges 1, 2, 3, 5, 6, and 7 in order that he might defend himself therefrom. (See also Admissions of Public Printer, J. App. 54-65.)

On June 3, 1949 Petitioner was *handed* a letter of dismissal[3] (J. App. 14) which stated, in an *admission* of lack

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[2] The need for specificity is particularly emphasized here in that only Charge 1 allegedly occurred recently, the other nine charges allegedly occurring from *6 months to 2 years* prior to April 29, 1949 when they were preferred: i.e. Charge 2, 20 months; Charge 3, 14 months; Charge 4, 8 months; Charge 5, 21 months; Charge 6, 20 months; Charge 7, 15 months; Charge 8, 14 months; Charge 9, 14 months; Charge 10, 6 months.

[3] In an obvious effort to influence the processes of justice, Respondent Public Printer had his agent, H. H. Wright, hand Petitioner the final dismissal letter on Friday, June 3, 1949, and then on Monday, June 6, 1949 filed a photostatic copy of the *original signed* letter (which could only have been *premediatedly* photostated *before* same was *handed* to

of specificity, that "nothing would be accomplished" by compliance with Petitioner's request that the charges be made specific, and sustained all ten alleged charges.

Petitioner then exhausted all administrative recourse, constantly raising the legal question of the insufficiency of six of the charges, and attempted to obtain the basic concepts of a fair hearing[4] before the Civil Service Commission but was unsuccessful. (See Admissions of Civil Service Commissioners J. App. 49-54; also, Court Commissioner's Report J. App. 102.) Respondents Civil Service Commissioners wrote a final letter (J. App. 49) dated March 17, 1950 "sustaining the action of the Government Printing Office".

Petitioner then filed suit in the District Court for the District of Columbia on March 10, 1950. The complaint was confined *solely* to Respondent's failure to follow the Statutory requirements.

On May 28, 1951 the District Court set aside Petitioner's dismissal and directed his reinstatement forthwith (J. App. 232-236).

On May 29, 1951 Respondents moved the Court of Appeals for an indefinite stay pending appeal on the premise

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Petitioner) (J. App. 14-15) with the Court of Appeals in a motion to dismiss case No. 10147 for mootness *three days* before the date of oral argument. The Court however, only indefinitely stayed proceedings. The late Hon. T. Alan Goldsborough, Trial Judge in the District Court session on May 18, 1951 commented on Respondent's bad faith as follows:

"But what did you do when he had an appeal in the Court of Appeals to have him put back in office? You discharged him just a few days before his appeal could be heard, so as to stop the appeal. That is bad stuff, you know."

[4] The Supreme Court in Morgan v. United States, 304 U. S. 1, said at page 22:

"The maintainance of proper standards on the part of administrative agencies in the performance of their *quasi-judicial* functions is of the highest importance • • • they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play." (Emphasis supplied.)

of "irreparable injury", and in a majority opinion the Court of Appeals issued a temporary stay (R. 241) on that date so all parties could file supplemental statements.

In another majority decision, the Court of Appeals granted Respondents a stay pending appeal (R. 242) on June 12, 1951. On June 27, 1951 the Court of Appeals granted (R. 243) a motion of the Veterans of Foreign Wars to file a brief as *amicus curiae*, attached herewith as *Exhibit 7*.

Oral argument was heard on October 12, 1951 and the Court of Appeals issued a majority decision (R. 244) on January 24, 1952 wherein the opinion of the District Court was *reversed*. The Honorable Judge Clark *dissented*.

Specification of Errors

The Court of Appeals erred:

1. In reversing the judgment of the District Court in a majority opinion by holding that *all* ten alleged charges assigned for Petitioner's dismissal from Federal employment *did* meet the mandatory and limiting provisions of the Veterans' Preference Act requiring advance written notice "stating *any* and *all* reasons, specifically and in detail."

2. In holding, contrary to documentary evidence[3] that Petitioner's discharge was "premised upon the reasons severally", hit or miss, and contrary to statutory authority, held that "the *invalidity of one would be immaterial* to the result"; (R. 246) and by further holding that Petitioner's dismissal should not be set aside when one or more alleged reason(s) was vague and gossamer, in contravention to the

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[3] Respondents Civil Service Commissioners state at (J. App. 38):

"It was within the administrative discretion of the Office to withhold action on the individual incidents as they occurred and to consider their cumulative effect as it appears was done in the instant case."

positive definition of the words "any" and "all" used in said Act, claiming "the statute would be *absurd* if it had such a meaning" (R. 245).

3. In holding, after examining the Court Commissioner's detailed report, the admissions of Defendants-Respondents, documentary evidence and lengthy adversary argument, that the lower court "was in error and must be reversed", contrary to the provisions of Rule 52 (a), Federal Rules of Civil Procedure.

4. In holding that Petitioner had taken another position before the court by stating at R. 244 that "Campbell now asserts the invalidity of *all* the charges", when the record clearly shows (J. App. 2, 11, 12, 165, 166 and 232; and Appellee's brief *Exhibit 2*, pages 13-14) that Petitioner has constantly maintained the same precise position throughout all administrative and court proceedings, namely, that only six (6) of the alleged charges (1, 2, 3, 5, 6, and 7) are indefinite and contrary to the Act.

5. In holding that the case of *Bailey* v. *Richardson*, 182 F. (2d) 46 (1950), 71 S. Ct. 669 (1951) was controlling in the dismissal of Petitioner, a veteran Federal employee, when, in fact, said citation was a "loyalty" question pursuant to Executive Order 9835, 3 C. F. R. 132 (Supp. 1947) which *prohibits specificity and detail and imposes other great restrictions*, whereas the retention or dismissal of Petitioner, a veteran, is strictly controlled by the precise and limiting provisions of the Veterans' Preference Act which *mandates "any and all reasons, specifically and in detail"* and expressly gives a veteran great protection from executive caprice.

6. In holding, solely on acceptance of the interpretation and conclusions of Respondents as to the merits of the charges, that the alleged charges for Petitioner's dismissal "were amply established" (R. 249) when Petitioner *never* attempted to, nor *could*, defend himself from such abstruse

charges, the record clearly showing that he had raised only a legal question in all judicial proceedings, and had stated on page 3 in his brief (Exhibit 2) "The truth or falsity of the reasons * * * were not in issue"; and the Court further erred in holding that "He (Petitioner) was fully advised *from time to time*[6] as to the charges" (*after* dismissal), in an obvious breach of the provisions of the Veterans' Preference Act requiring "*advance* written notice" *before* dismissal.

7. In ignoring to rule on an important question of law brought before it by all parties on the issue of jurisdiction of the District Court Commissioner of Veterans' Cases pursuant to Local Civil Rule 29 (a) 2, wherein all veterans' cases are automatically referred for a report from said Commissioner, and the record clearly shows that the jurisdiction and authority of the Commissioner and the validity of said Rule were seriously and bitterly contested in repeated court proceedings as follows: Petitioner's Motion to Defer Hearing Until Report of Commissioner (J. App. 65), Respondent's Written Objections Thereto, District Court Order Referring Case to Commissioner (J. App. 65), Respondent's Motion to Stay Proceedings Before Commissioner (J. App. 66-68), District Court Order Staying Proceedings (J. App. 69), Respondent's Motion for Rehearing on Order Referring Case to Commissioner, District Court Opinion and Order on Respondent's Motion for Rehearing (J. App. 69-70), Respondent's Statement of Record Continuing Objections to Reference to the Commissioner (J. App. 70), Respondent's Objections to Report of Com-

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[6] Respondents Civil Service Commissioners *admit* in their own documentary evidence that such holding is contrary to law (J. App. 20) as follows:

> "The Appellant's (Petitioner's) attorney, Mr. Allshouse, submitted during the hearing in the Commission that any want of specificity and detail in the charges could *not* be made up in *subsequent* proceedings. *This submission is entirely correct;* * * *" (Emphasis supplied.)

missioner and Motion to Strike Said Report (J. App. 127-132), Respondent's Point 9 on Appeal (J. App. 237), and Petitioner's Question 3 in his Court of Appeals Brief (Exhibit 2).

Reasons for Granting the Writ

1. THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT HAS DECIDED A QUESTION OF GENERAL IMPORTANCE RELATING TO THE CONSTRUCTION AND APPLICATION OF A STATUTE OF THE UNITED STATES, WHICH QUESTION HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

This is a Petition for Writ of Certiorari to define the meaning and statutory effectiveness of the langage used by Congress in attempting to protect veterans in Federal employ from executive caprice or fiat, as in the instant case, when they enacted Section 14 of the Veterans' Preference Act of 1944. The opinion of the District Court and the majority opinion of the Court of Appeals are diametrically opposed as to the meaning and intent of the words "any, all, specifically and detail" which constitute the reason for the very existence of Section 14.

The requirements of Section 14 are "*advance* written notice, stating *any and all reasons, specifically and in detail,* for any such *proposed* action" in dismissing a veteran. The Court of Appeals has overruled the District Court, holding "that the statute would be absurd if it had such a meaning", and the statute now stands null and void with a definition which does violence to the ordinary meaning of the words and phrases used therein.

It is abundantly clear that the Congress carefully weighed its words in the construction of Federal statutes as evidenced by the use of "all" in some cases and its omission in others, fully confident that every word would be given its due force and appropriate meaning. *Williams* v. *United States,* 289 U. S. 53.

The procedural requirements of Section 14 are succinct and clear in their mandate, and the courts have previously defined the words used thusly:

> All: "A more comprehensive and all inclusive word than 'all' can hardly be found in the English language. There is a totality about it that few words possess. It is the whole, the sum of all the parts, the aggregate." *In re Central of Georgia Ry. Co.*, D. C. Ga., 58 Fed. Supp. 807, 813.
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> Specific, Specifically: " 'Specific' means more definite or making definite; limited or precise; precisely formulated or restricted; tending to specify or make particular; the word is limited to a particular or definite or precise thing, and hence is the very opposite of 'general'." *State ex rel. State Ry. Comm.* v. *Ramsey*, 37 N. W. 2d 502, 509; 151 Neb. 333.
>
> " 'Specifically' means in a specific manner, explicitly, particularly, definitely." *Straton* v. *Hodgkins*, 155 S. E. 902; 109 W. Va. 536.
>
> Detail: "The word 'detail' means a minute portion; one of the small parts; a particular; an item. The word is used chiefly in the plural, as the details of a scheme or transaction." *State ex rel Van Densen* v. *Williams*, 39 So. 276, 277; 143 Ala. 501.

and settlement of the questions involved is of the greatest possible concern to the hundreds of thousands of veterans who are, and will be, in Federal employ, as evidenced by the brief as *amicus curiae* of the Veterans of Foreign Wars (Exhibit 1) filed in the court below which states on page 2:

> "The last word, as always, rests with the judiciary, and we and twenty million veterans greatly concerned await your decision, believing that the judgment of the Court (District) below should be affirmed."

and the Courts would invest a case of interest to them which has strong appeal to a court of equity for its remedies, once a legal right is fairly in controversy. *Porter* v. *Warner Co.*,

328 U. S. 395, 398; *Yakus* v. *United States*, 321 U. S. 414, 440; *Hecht Co.* v. *Bowles*, 321 U. S. 321, 331.

In the case at bar it is manifestly clear that Petitioner was not furnished all alleged reasons specifically and in detail in the charging letter (J. App. 7-9). Petitioner requested specificity and detail in order to defend himself (J. App. 11-13). Respondents refused (J. App. 14) by stating "* * * nothing would be accomplished by compliance with your request". For example, Charge 6 (J. App. 8) is a most serious charge[7] and, *if true*, is a *breach of the Criminal Code*, Sections 128 and 129, 18 U.S.C. 234 and 235, and such vagueness and abstruseness falls far short of the requirements of the Act. *Petitioner has never to this date been advised as to what "official papers" were allegedly removed.* Respondents did not furnish nor even show Petitioner a copy of the letter[8] referred to and Petitioner could not know the contents thereof. Petitioner has never to this date been advised as to who his alleged accomplice(s) was/were. Petitioner has never to date been advised as to what the "false or misleading statements" were.

The need for specificity is particularly necessary inasmuch as Charge 6 was 21 months old at the time of dismissal. Charges 1, 2, 3, 5, and 7 are also glaringly lacking in specificity and detail. The statutory procedural requirements relating to dismissal of Federal employees must be followed or the dismissals will be set aside by the courts. *Borak* v. *Biddle*, 141 F. 2d 278, cert. den. 65 S. Ct. 42; *Fisher* v.

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[7] *Charge 5 is also a criminal charge*, if true, notwithstanding that the truth or falsity are not in issue, Petitioner takes the unequivocal stand that if such serious charges are sufficient for dismissal after 14 years of trusted Federal service, Respondents are derelict in their duty for not referring same to a Federal Grand Jury for appropriate action.

[8] The letter in question (J. App. 218-222) was later presented to the Civil Service Commission and does *not* connect Petitioner with any of the vague innuendoes. In this respect, see the testimony of Herbert J. Jacobi in the report of the Court Commissioner J. App. page 84.

Haeberle, 80 F. Supp. 652; *Wittner* v. *United States,* 76 F. Supp. 110; *Stringer* v. *United States,* 117 C. Cls. 30, 90 F. Supp. 375.

The Court of Claims in applying the plain language of Section 14 of the Veterans' Preference Act in *Stringer* v. *United States,* 90 F. Supp. 375, concerning giving a veteran Federal employee a 29-day notice rather than the requisite 30-day notice, stated at page 379:

> "Nor can we accept defendant's contentions that plaintiff must show wherein he was harmed by the insufficiency of the notice period and that the doctrine of *de minimus non curat lex* applies here. We cannot construe a statute that plainly says 'at least thirty days' as meaning 'not quite thirty days'. The requirements of Section 14 are specific and mandatory. *Neither this Court, nor the Civil Service Commission, nor the Chief of Engineers can disregard them. Strict compliance is required. Lamb* v. *United States,* 90 F. Supp. 369; *Gadsen* v. *United States,* 78 F. Supp. 126; *Wittner* v. *United States,* 76 F. Supp. 110; *Elchibegoff* v. *United States,* 106 C. Cls. 541." (Emphasis supplied.)

The Court in the *Stringer* case continued at page 381:

> *"These were not little matters. They are of vast concern to the great array of veterans who are at least entitled to a good faith compliance with the rights granted * * * by Congress. We cannot set the pattern of trimming away those rights."* (Emphasis supplied.)

The majority opinion of the Court of Appeals reversing the District Court in the instant case negates the clear and succinct mandate of the Veterans' Preference Act.

2. THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT HAS RENDERED A DECISION IN CONFLICT WITH ITS OWN PREVIOUS DECISION IN THE CASE OF *DEAK* V. *PACE*, 185 F. 2d 997, ON THE SAME PRECISE QUESTION OF SPECIFICITY REGARDING ALLEGED CHARGES SUPPORTING DISMISSAL OF FEDERAL EMPLOYEES.

In *Deak* v. *Pace, supra,* decided December 7, 1950, appellant, a *non-veteran* Federal employee, was being removed under authority of Section 3, Act of December 17, 1942, 52 Stat. 1053, 5 U.S.C. 652 which provides in pertinent part:

> "Provided that within thirty days *after* such removal any such person shall * * * be *fully* informed of the reasons for such removal, * * *" (Emphasis supplied.)

The reasons given for *Deak's* dismissal were:

> "1. That you attended a meeting open only to Communist Party members, and
> 2. That you have attended meetings openly sponsored by the Communist Party or organization known to be affiliated with the Communist Party, and have evinced active and sympathetic affiliation with these organizations."

The Court, in granting *Deak* relief stated at page 999, 185 F. 2d:

> "It will be noted that the times, places and organizations were not specified * * * The controlling question is whether the Secretary, acting through his designated officer, fully informed appellants of the reasons for their removal. *The statute accords the right to information.* The duty to inform and the right to be informed are for the manifest purpose of affording the employee a fair opportunity to oppose the removal * * *. *The meaning of the statutory provision for information seems very clear* * * * *we see no reason why details as to times, places and organizations should not* have been furnished." (Emphasis supplied.)

It is to be noted that the controlling statute in the *Deak* case is very broad in construction, stating only that an employee must be "fully informed of the reasons", *after* dismissal, whereas the mandate of the Veterans' Preference Act in the case at bar is most precise in requiring "any and all reasons, specifically and in detail, for any such proposed action", *before* dismissal.

Notwithstanding Petitioner's Request for Admissions (J. App. 49-65), the Report of the District Court Commissioner (J. App. 100), the District Court's Findings of Fact and Conclusions of Law (J. App. 232-236), the unambiguous language of Section 14, and the Court of Appeals decision in the *Deak* case, the Court of Appeals in a majority opinion (R. 245) held that "the District Court's conclusion that the charges were not sufficiently specific was plainly erroneous".

Such holding in light of the record of the extensive detailed proceedings in the Trial Court is further contradictory to its own decisions and to universal judicial decisions holding that a factual finding by a Trial Court will not be disturbed on appeal unless it is clearly erroneous. *Smith* v. *Wilson*, 171 F. 2d 824; *Cherry-Burrell Corp.*, v. *Coe*, 143 F. 2d 372; *Sekulow* v. *11th & F Street Valet*, 162 F. 2d 19. See also: *Tennessee Coal, Iron and R. Co.*, v. *Muscoda Local No. 123, etc.*, 137 F. 2d 176, affirmed 64 S. Ct. 698.

3. THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA HAS SO FAR SANCTIONED SUCH A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEDURE AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION.

The Court of Appeals substituted its conclusions for the facts as proven by Respondent's own documentary evidence, in that the Court held that Petitioner's dismissal was "premised upon the reasons severally", hit or miss, and

that "the invalidity of one would be immaterial to the result", stating at (R. 246):

> "In the case at bar the Government officials assert the sufficiency of each of the assigned reasons, and we find no ground to doubt the correctness of that position."

Respondents Civil Service Commissioners' *own documentary evidence* at J. App. 26 states:

> "It was within the administrative discretion of the (Government Printing) Office to withhold action on individual incidents as they occurred and to consider their *cumulative* effect as it appears was done in the instant case." (Emphasis supplied.)

The Court of Appeals cited *Bailey* v. *Richardson*, 182 F. 2(d) 46, 71 S. Ct. 669, (1951) as controlling "the whole subject of the rights of Civil Service employees upon proposals for discharge". Said citation is not in point because *Bailey* was dismissed under the provisions of Federal Employees Loyalty Program, Executive Order 9835, 3 C. F. R. 132 (Supp. 1947) which *prohibits* specificity and detail and imposes other great restrictions; whereas the Veterans' Preference Act, here in issue, *mandates* specificity and detail as concerns a veterans' proposed dismissal.

The Court of Appeals accepted the sole conclusions and argument of Respondents as to the merits of the alleged charges by holding that "the charges were amply established", when Petitioner has never attempted to question the truth or falsity, the sole issue being that of conformance of the charges to the Veterans' Preference Act and, in fact, such holding was in error from the record. See J. App. 115 where the Court Commissioner states:

> "• • • the ascertainment of the truth of the case is materially aided by the reading of the exhibit in question (J. App. 17-48). There the sustaining of the

ten charges by the Chief Law Officer is definitely based, I believe, on such inconsequential evidence that the whole evidence is nothing but the aggrandizement of the insignificant."

Finally, the Court of Appeals failed to rule on an important question of law brought before it by all parties on the issue of the jurisdiction of the District Court Commissioner of Veterans' Cases pursuant to Local Civil Rule 29 (a) 2. The issue was bitterly contested in the District Court as set forth as No. 7 of the "Specification of Erorrs" herewith.

Conclusion

WHEREFORE, Petitioner earnestly prays that a writ of certiorari be granted by the Supreme Court of the United States directed to the United States Court of Appeals for the District of Columbia Circuit wherein the decision of the lower court on the five questions presented herewith may be reversed, and a clear definition rendered in such a manner as to give full effect to the precise and succinct provisions of Section 14 of the Veterans' Preference Act in direct relation to the intent and purpose of the Congress in affording veteran Federal employees protection from executive caprice or fiat in their career employment.

Most respectfully submitted,

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